



City of Marietta

Meeting Minutes

CITY COUNCIL

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

William B. Dunaway, Mayor
Betty Lou Hunter, Ward 1
M. C. (Pete) Waldrep, Jr., Ward 2
John V. Sinclair, Ward 3
G. A. (Andy) Morris, Ward 4
Rev. Anthony Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, January 12, 2005

7:00 PM

Council Chamber

Presiding: William B. Dunaway

Present: Betty Lou Hunter, M. C. "Pete" Waldrep, Jr., John Vincent Sinclair, G. A. "Andy" Morris, Rev. Anthony Coleman, James W. King and Philip M. Goldstein

Also Present:

William F. Bruton, Jr., City Manager

Douglas R. Haynie, City Attorney

Shelia R. Hill, City Clerk

INVOCATION:

Councilman Philip M. Goldstein introduced Iqbal Kalla, President of the Islamic Center of Marietta, who gave the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Dunaway asked Judge Jim Morris to lead the pledge of allegiance.

PRESENTATIONS:

20041433 Service Award for Pete Waldrep

Presentation of award for 10 years of service to Councilman M. C. "Pete" Waldrep, Jr.

Mayor Dunaway called forward Council member Waldrep and presented him with an award for 10 years of faithful service to the City of Marietta.

Council member Waldrep expressed his appreciation for the opportunity to serve in the community where he grew up. He also mentioned that this would be his last year in office because he would not be seeking re-election.

This matter was Presented.

20050035 Presentation of Allgood Road by SPSU

Presentation of the Allgood Road Collaborative which is a joint effort of the City of Marietta and Southern Polytechnic State University. This gives architectural, civil engineering and construction students the opportunity to present conceptual projects to the local community.

Mayor Dunaway, joined by Council member Coleman and Dean Bill Barns, acknowledged the conceptual projects by students of Southern Polytechnic State University as part of the Allgood Road Collaborative. The projects were displayed in the lobby of City Hall to be viewed by the local community.

Council member Coleman thanked the North Marietta Neighborhood Association, City Council and the students for working together to improve the quality of life in the community.

Dean Barns mentioned that the architectural designs presented not only deal with visual appeal but also the organization of space as well as health and environmental issues. These architectural, civil, engineering and construction students have gone beyond the guidelines to improve the neighborhood.

Matt Walsh and William Norris, team leaders, both gave a brief description of the exhibits, which were designed to stimulate community interest, provoke comments and define the city's direction in the study areas.

Mayor Dunaway mentioned that this information would be posted on the city website to allow for community comments.

Presented

20050043 Finance GFOA Recognition

Lori Duncan, Budget Administrator and Diane Sellitto, Budget Analyst accepting the Distinguished Budget Presentation Award which is the highest form of recognition in governmental budgeting from the Government Finance Officers Association.

Mayor Dunaway, joined by Monte Vavra, presented the Distinguished Budget Presentation Award to Lori Duncan, Budget Administrator, and Diane Sellitto, Budget Analyst. The City of Marietta has received this award for their outstanding budget presentations eight (8) times since Lori Duncan has been over the department, thirteen (13) times total.

Presented

20050046 Presentation from the Boys & Girls Club

Presentation from Mr. Henry Saxon, Regional Vice-President, Boys and Girls Club of Cobb County to the City of Marietta for the city's commitment to the Franklin Road Boys & Girls Club.

Mayor Dunaway called forward City Manager Bill Bruton and Henry Saxon, Regional Vice-President of the Boys and Girls Club of Cobb County. Mr. Saxon presented the City of Marietta the Helping Hand Award in appreciation for the city's effort to launch a program to help guide the children in the Franklin Road area.

Mr. Bruton thanked the City Council for their support and working with the Boys and Girls Club to enhance the activities for the children on Franklin Road.

Presented

PROCLAMATIONS:

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*).

(A public hearing will be held only for those items marked by an asterisk that require a public hearing, which is so noted below the agenda item.)

Mayor Dunaway succinctly explained the consent agenda process. The following amendments were made to the agenda:

-under Minutes: Agenda item 20041431 was added to the consent agenda

-under City Council Appointments: Agenda item 20041300 remains on the consent agenda with the notation of Council member Coleman voting against

-under Other Business: Agenda item 20041458 was added to the consent agenda

Mayor Dunaway opened the public hearing for items on the consent agenda requiring a public hearing. Seeing no one wishing to speak, the public hearing was closed.

A motion was made by Council member Goldstein, seconded by Council member Sinclair, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 - 0 - 0

Approved

with the following exception:

-Council member Coleman voting against agenda item 20041300, 20050444 and 20050045.

-Council member Hunter abstaining on agenda item 20041482

-Council member King voting against agenda items 20050044 and 20050045.

-Council member Goldstein voting against agenda items 20041443 and 20041455 and abstaining on agenda items 20041451 and 20041482.

MINUTES:

*** 20041431 Regular Meeting - December 8, 2004**

Review and approval of the December 8, 2004 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

MAYOR'S APPOINTMENTS:

- * **20041393 Mayor Pro tem**
Reappointment of M. C. "Pete" Waldrep, Jr., as the Mayor Pro tem for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041394 Presiding Officer**
Reappointment of James W. King as the Presiding Officer for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041395 BLW Appointment (Council member)**
Reappointment of James W. King as the council representative on the Board of Lights and Water (BLW) for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041396 Economic/Community Development Committee**
Reappointment of John V. Sinclair, as chairman, Philip M. Goldstein and G. A. "Andy" Morris, Sr., to the Economic/Community Development Committee for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041397 Finance/Investments Committee**
Reappointment of Philip M. Goldstein, as chairman, John V. Sinclair and James W. King to the Finance/Investments Committee for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041398 Judicial/Legislative Committee**
Reappointment of M. C. "Pete" Waldrep, Jr., as chairman, Betty L. Hunter and James W. King to the Judicial/Legislative Committee for a term of one year expiring on January 2, 2006.
This Matter was Approved on the Consent Agenda.
Vote: 7 - 0 - 0 Approved
- * **20041399 Parks, Recreation & Tourism Committee**
Reappointment of Rev. Anthony Coleman, as chairman, Betty L. Hunter and

M.C. "Pete" Waldrep, Jr., to the Parks, Recreation and Tourism Committee for a term of one year expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041400 Personnel/Insurance Committee**

Reappointment of Betty L. Hunter, as chairman, Philip M. Goldstein and Rev. Anthony Coleman to the Personnel/Insurance Committee for a term of one year expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041401 Public Safety Committee**

Reappointment of G. A. "Andy" Morris, as chairman, M. C. "Pete" Waldrep, Jr., and Rev. Anthony Coleman to the Public Safety Committee for a term of one year expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041402 Public Works Committee**

Reappointment of James W. King, as chairman, Johnny Sinclair and G. A. "Andy" Morris to the Public Works Committee for a term of one year expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041403 Marietta Housing Authority Liaison**

Reappointment of Betty Hunter as the council liaison to the Marietta Housing Authority for a term of one year expiring on January 2, 2006

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041404 Marietta Board of Education**

Reappointment of M. C. "Pete" Waldrep, Jr., as the council liaison to the Marietta Board of Education for a one year term expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041405 Pension Board (Council Representatives)**

Reappointment of Betty L. Hunter and James W. King to the City of Marietta Pension Board, expiring on January 2, 2006.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

CITY COUNCIL APPOINTMENTS:

*** 20041298 ADA Advisory Board - Post 1**

Appointment of Nysia Lanier to Post 1 of the American with Disabilities Advisory (ADA) Board for a three-year term expiring on December 31, 2007.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041300 ADA Advisory Board - Post 5**

Reappointment of Lawrence (Larry) Panetta to Post 5 of the American with Disabilities Advisory (ADA) Board for a three-year term expiring on December 31, 2007.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: 1 - Rev. Anthony Coleman

*** 20041408 Planning Commission (Ward 1)**

Reappointment of William Florence to the Planning Commission, Ward 1, for a term of three years expiring on January 14, 2008.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041429 Cobb Municipal Association Voting Delegates for 2005**

Appointment of Betty L. Hunter and Philip M. Goldstein as the 2005 voting delegates for the Cobb Municipal Association.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041430 Marietta Welcome Center & Visitors Bureau**

Reappointment of Philip M. Goldstein to the Marietta Welcome Center & Visitors Bureau for a two-year term.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

ORDINANCES:

20041351 Z2005-01 Joy E. Zoodsma 479 & 483 Kennesaw Avenue

Z2005-01 JOY ZOODSMA requests rezoning for property located in Land Lot 10850, Parcels 70 and 1680, 16th District, 2nd Section, Marietta, Cobb County,

Georgia and being known as 479 and 483 Kennesaw Avenue from R2 (Single Family Residential) to R4 (Single Family Residential). Ward 4A.

Mayor Dunaway opened the public hearing, and City Attorney Douglas Haynie explained the rules of order for rezoning hearings and swore in those wishing to speak.

JOY E. ZOODSMA, the applicant who resides at 479 Kennesaw Avenue, requested rezoning for property located at 479 Kennesaw Avenue and 483 Kennesaw Avenue from R-2 (Single Family Residential) to R-4 (Single Family Residential) for the purpose of dividing the parcel into three (3) lots. Ms. Zoodsma would like to relocate two older houses to the property so they would not be demolished in their current location.

Council member Morris questioned whether this property was purchased from the Commons Development, which Ms. Zoodsma confirmed. Mr. Morris then questioned a stipulation in the deed, which states that there would be only one single-family home placed on the property. Ms. Zoodsma stated that she would try to negotiate with the Commons regarding that issue, if the rezoning were approved.

Council member Sinclair clarified that the applicant would like to split the property into three lots to relocate two houses, which Ms. Zoodsma confirmed.

Council member Goldstein questioned the location of the driveway and Mrs. Zoodsma stated that it was located on the part of the property purchase from the Commons and used by both homes.

Speakers in Opposition:

John Rakestraw lives directly behind the applicant at 390 Talcott Circle and spoke regarding the drainage problem that already exists in the area. He mentioned that Ms. Zoodsma's plans made no provisions to accommodate the drainage from the additional homes.

Council member Coleman questioned whether the City has been made aware of the drainage problem on Talcott Circle. Council member Morris mentioned that the situation was being investigated.

Steve McNeel lives adjacent to the applicant at 471 Kennesaw Avenue and opposed having three homes placed on the property. He also opposed the R4 (Single Family Residential) zoning which means Ms. Zoodsma could put up to four homes on the property, if she desired to do so.

Greg Griffin lives two houses away from the property at 435 Kennesaw Avenue and opposed the rezoning that would allow the applicant to build a house in her back yard. Mr. Griffin feels that this would lower the property value of the neighboring homes.

Mayor Dunaway closed the public hearing.

Council member Morris asked the City Attorney Douglas Haynie whether the restriction in the warranty deed would cause any problems with the request for rezoning. Mr. Haynie stated that it would present a legal issue since the restriction was included in the warranty deed. It would be a better course of action for Ms. Zoodsma to negotiate with the Commons first then request the rezoning. (The Warranty Deed was entered into the record as Exhibit 1)

Mayor Dunaway re-opened the public hearing to allow rebuttal by the applicant.

Ms. Zoodsma stated that negotiating with the Commons regarding the deed restriction would be difficult but she was willing to move forward if the rezoning were approved. She also agreed to have a restriction as part of the rezoning that would only allow three homes on the property.

Mayor Dunaway closed the public hearing.

Motion to deny the rezoning request.

The motion was made by Council member Morris, seconded by Council member Goldstein, that this matter be Denied. The motion carried by the following vote:

Vote: 7 - 0 - 0

Denied

20041352 Z2005-02 James Collins portions of 137 and 325 Austin Avenue

Z2005-02 JAMES COLLINS requests rezoning for property located in Land Lot 1141, portions of parcel 7 and 27, 16th District, 2nd Section, Marietta, Cobb County, Georgia and being known as portions of 317 and 325 Austin Avenue from R4 (Single Family Residential) to CRC (Community Retail Commercial). Ward 6A.

Mayor Dunaway opened the public hearing, and City Attorney Douglas Haynie swore in those wishing to speak.

Don Mize, attorney for the applicant James Collins, requested rezoning for property located at 317 and 325 Austin Avenue from R4 (Single Family Residential) to CRC (Community Retail Commercial) for the purpose of constructing a commercial building. This application was reconfigured to meet some of the concerns of the community and other interested parties. One of the issues was regarding access to the property, which has been changed from Cobb Parkway to Austin Avenue. Another concern was regarding drainage, which Mr. Collins has addressed as well. A water control device has been installed, specifically, a dam that would slow down the flow of water.

Mayor Dunaway closed the public hearing.

Council member Goldstein raised the issue regarding the applicant potentially being sited for a building already on the property being built without a permit. If the rezoning request were denied, code enforcement would move forward with the citation and possibly have the building torn down. Mr. Mize mentioned that he was aware of the potential problems Mr. Collins would have if the rezoning request were denied.

Council member King expressed the desire to eliminate commercial access on Austin Avenue to preserve the residential area. In prior conversations the objective was to redirect commercial access to Cobb Parkway and unfortunately, this rezoning request does comply.

The applicant, Mr. Collins, mentioned that he would not want to damage this area on Austin Avenue since he owns two residential properties and several additional pieces of property there. However, he does have an easement from the property owner to have access to the commercial building from Austin Avenue.

Council member Goldstein advised the applicant to continue this matter to allow time to come up with a better solution to the issues raised. Otherwise, the motion would possibly be to deny this matter, which would mean another application could not be submitted for twelve (12) months. Mr. Collins felt that this application addressed the concerns of council, however, agreed to the extension in order to better configure the application.

Motion to approve continuance of the rezoning request until the February 9, 2005, regular City Council meeting, with re-advertisement expenses paid by the applicant.

In response to council inquiry about environmental impacts regarding water run off, Acting Planning and Zoning Director Rusty Roth stated that the issue has been resolved and meets the city's requirements.

The motion was made by Council member Goldstein, seconded by Council member King, to Continued this file. The motion carried by the following vote:

Vote: 7 - 0 - 0

Continued

20041426

Z2005-05 City of Marietta

Ord 6760

Z2005-05 CITY OF MARIETTA requests rezoning for certain properties located in Land Lots 1290 and 1291 of the 16th District and certain properties located in Land Lots 216 and 217 of the 17th District from RM12 (Multi-family residential 12 units/acre), CRC (Community Retail Commercial) and R4 (Single Family Residential 4 units/acre) to MXD (Mixed Use Development).

Mayor Dunaway opened the public hearing, and City Attorney Douglas Haynie swore in those wishing to speak.

Mr. Haynie explained this request for rezoning was step one of a two-step process to have the properties rezoned from RM12 (Multi-family residential 12 units/acre), CRC (Community Retail Commercial) and R4 (Single Family Residential 4 units/acre) to MXD (Mixed Use Development). The public would have a chance to make comments during the two-step process if council desires.

Gordon Brands, who resides at 108 McDonald Street, spoke in opposition of rezoning the property to MXD. He and the surrounding neighbors would like the area to be strictly residential. They feel that any additional office, retail or commercial businesses would pull business away from the square.

Council member Sinclair mentioned that there was a piece of the property on Powder Springs Road that would not be good residential property. Mr. Brands stated that the area was all residential when Johnny Walker Homes was there, so there are ways around having commercial developments.

Mayor Dunaway closed the public hearing, seeing no one else wishing to speak.

Council member Sinclair questioned whether the final plat would be posted for public comments. Mr. Roth answered affirmatively and mentioned that staff has access to the mailing list that was acquired during the Powder Springs Road Corridor Study that could be used to notify the public.

A motion was made by Council member Goldstein, seconded by Council member Hunter, to approve the rezoning as requested.

A substitute motion was made to approve the rezoning as requested with the stipulation that a letter be mailed to individuals on the Powder Springs Road Corridor Master Plan mailing list advising them when the final plat comes before the council. Further, that a public hearing would be held at that time.

Council member Goldstein advised against the stipulation that could create a roadblock for the rezoning if someone does not receive a letter. Council member Sinclair explained that with this stipulation, the public was ensured the chance to voice their opinion regarding this issue.

The motion was made by Council member Sinclair, seconded by Council member King, that this matter be Approved as Stipulated. The motion carried by the following vote:

Vote: 4 - 3 - 0

Approved as Stipulated

Vote Against: 3 - M. C. "Pete" Waldrep, Jr., G. A. "Andy" Morris and Philip M. Goldstein

*** 20050004 Code Enforcement - 879 Meadow Place**

Ord 6761

An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation rendering sanitary, property located at 879 Meadow Place in the corporate limits of the City of Marietta.

Certified mail receipt received November 2, 2004.

Taxes paid: Yes

PUBLIC HEARING REQUIRED

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

RESOLUTIONS:

*** 20041308 Delk Road LCI TOD Study**

Res 2005-1370

A Resolution approving the findings and conclusions of the Delk Road Transit Oriented Development (TOD) Livable Centers Initiative (LCI) study.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

CITY ATTORNEY'S REPORT:

City Attorney Douglas Haynie reported that the City of Marietta received a favorable ruling from the United States Supreme Court regarding a license revocation that occurred in August 2003. The revocation by the City Council was taken through the appeals courts in Georgia then to the United States Supreme Court where it was upheld by Judge Ingram. This matter has been resolved completely.

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:

1. Economic/Community Development: John V. Sinclair, Chairperson

*** 20041449 Manget Street Redevelopment Projects**

Motion to approve the request for proposal (RFP) for the Manget Street Redevelopment Project and authorize issuance, with the right to accept and reject all bids.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

2. Finance/Investment: Philip M. Goldstein, Chairperson

*** 20041414 Vest Reimbursement**

Ord 6762

Ordinance approving a budget amendment for the acceptance of a grant for bullet resistant vests in the amount of \$4,740.50.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041450 MFES Use of Cobb Tax Equity Reimbursement**

Ord 6763 Ordinance amending FY2005 General Fund Budget to receive and appropriate Cobb Tax Equity Reimbursement of \$400,000 for purchase of Fire Truck and Intersection Safety Program receipts of \$128,909 for funding program and administrative costs.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20050005 Budget Amendment related to Redevelopment Projects**

Ord 6764 Ordinance amending the fiscal year 2005 budget to appropriate \$191,000 from fund balance to the property acquisition account to cover carrying an disposition costs for the Manget Street and Johnny Walker Homes Redevelopment projects.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

3. Judicial/Legislative: M. C. "Pete" Waldrep, Jr., Chairperson

*** 20041309 Sign Ordinance Amendment for Fee Changes**

Motion to authorize advertisement of a public hearing at the February, 2005, City Council Meeting to consider the proposed amendment to the Sign Ordinance for the purpose of eliminating sign permit fees for permanent signs, while continuing to require building permit fees.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041361 Establishing Qualifying Fees & Qualifying Period for the November 8, 2005 General Election**

Ord 6765 Ordinance to provide for the establishment of qualifying fees for the office of Mayor and the office of Council for the city of Marietta, Georgia and to provide for the opening and closing dates for filing notice of candidacy by candidates.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041443 Historic Preservation Ordinance**

Motion to authorize advertisement for a Public Hearing to be held at the February, 2005, City Council Meeting regarding the proposed amendment to the Historic Preservation Ordinance.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: 1 - Philip M. Goldstein

*** 20041428 2005 Judicial Legislative Issues**

Motion to approve Marietta's top legislative items for the Georgia General

Assembly Session for 2005.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

4. Parks, Recreation and Tourism: Rev. Anthony Coleman, Chairperson

*** 20041419 Special Event Street Closure Requests for 2005**

Motion to approve the temporary closing of streets and parking spaces for the attached special events in calendar year 2005.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041441 Use of Glover Park**

Motion to waive Section 10-4-70D of the Marietta Code of Ordinances and approve the consumption of alcohol in Glover Park for the State Bar of Georgia event on Friday, April 7, 2006 from 5:00 p.m. until 7:00 p.m.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

5. Personnel/Insurance: Betty L. Hunter, Chairperson

6. Public Safety Committee: G. A. "Andy" Morris, Chairperson

7. Public Works Committee: James W. King, Chairperson

*** 20041454 Automated Traffic Enforcement System**

Motion to authorize staff to move forward with the installation of an Automated Traffic Enforcement Systems at the intersection of Allgood Road and Cobb Parkway.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: 1 - Philip M. Goldstein

*** 20041455 Request from Georgia Department of Transportation regarding Old Canton Road Bridge at US 41**

Motion to approve a request from the Georgia Department of Transportation to add a portion of Industrial Park Drive and Elizabeth Street to the State Route system for the duration of the construction project at Old Canton Road and US 41, contingent upon the approval of the City Attorney.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041457 Proposed Right of Way Exchange on Fairview Avenue**

Motion to deny a request to exchange right of way along Fairview Avenue as a part of an annexation and rezoning request.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041459 Cora Court and Henry Drive Right of Way**

Motion to approve a request to close Cora Court and a portion of Henry Drive.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041460 Budget Amendments for Cherokee Street @ Cherry Street and Tower Road @ Church Street**

Ord 6766

Motion to approve a request to establish budget amendments for the Georgia Department of Transportation funding for Cherokee Street at Cherry Street and Tower Road at Church Street improvement projects.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041490 Marietta Aeronautical Museum Request**

Motion to provide a permanent loan of the Berlin Wall piece to the Marietta Aeronautical Museum and transfer ownership immediately, subject to the condition that the Berlin Wall piece will revert back to the city if the museum is dissolved.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

SCHEDULED APPEARANCES:

UNSCHEDULED APPEARANCES:

Mayor Dunaway opened the floor for unscheduled appearances.

Robbie Huck, who resides at 191 Summit Avenue, spoke regarding the request for proposal (RFP) for the Manget Street Redevelopment Project. Ms. Huck recommends amending section 2.08 regarding the evaluation and selection process, which now states that one or more interviews including a possible presentation of proposals at a public/neighborhood forum may be required by the Marietta Redevelopment Corporation before rendering a decision. This passive statement should be more active and say that presentation of proposals would be presented to the public at a neighborhood forum. Ms. Huck feels that the way it is worded now suggests that the public is not interested in the project; however, the reality is that the neighborhood is interested. Ms. Huck also mentioned that she did agree with the wording in the RFP referencing single-family homes as part of this development. The community wants homes built in this area not housing.

Council member Hunter commented that the Marietta Redevelopment Corporation has already set a date in April for a neighborhood meeting regarding this matter. There will be two meetings that day, one at noon and another one that night for those who have scheduling conflicts.

OTHER BUSINESS:

20041468 Laurel Springs and Dunleith Homeowners Association, Inc. , Appeal Hearing

Appeal hearing for the Laurel Springs Homeowners Association, Inc., and the Dunleith Homeowners Association regarding the decision to issue a beer license to Eun & Agnes, Inc., dba Maria Bonita Club, 1177 Bellemeade Drive, Marietta, GA.

Mayor Dunaway opened the appeal hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.

Business License Manager Scott Everingham gave a procedural background summary regarding this matter. Mr. Everingham stated that on November 1, 2004 the Business License Division received an application from Mr. and Mrs. Eun where both were listed as fifty percent (50%) owners of the Maria Bonita Club located at 1177 Bellemeade Drive. The application was for beer consumption on the premises of the bar/lounge establishment. The application passed the review of the Police Department, including criminal history checks on the owners and the agent. The Business License Division determined that the business met the requirements of the city code, including certain distance requirements from schools and religious institutions. Signs were posted on the premises notifying the public of a hearing before the city manager two weeks before the hearing. The public hearing was held on December 1, 2004 and four citizens spoke in opposition. There was concern expressed regarding the current applicant being related to the prior owners of the Maria Bonita Club. In response, a written signed and notarized statement was obtained from Mr. Eun stating that they were not related. In addition, the attorney for the applicant was in agreement that this was not a related party transaction. On December 14, 2004, the city manager made the decision to issue the beer license, however, no license has been issued at this time. The Laurel Springs Homeowners Association, Inc., and the Dunleith Homeowners Association are appealing that decision.

City Attorney Douglas Haynie questioned whether the affidavit signed by Mr. Eun was included in the packet previously handed out to council. Mr. Everingham pointed out that a copy of the affidavit was on page 39 of the packet. The affidavit states that Mr. Eun was going to be the future owner of the Maria Bonita Club with his wife and they have no relation to the prior owners.

Attorney for the applicant, John Roberts, addressed the council stating that Mr. Eun has 12 years of experience holding a beer license with no violations or citations. Council member Waldrep questioned whether this experience was 'packaged sales' or 'buy the drink sales'. Mr. Roberts answered that this experience was in package sales, however, the manager that has been hired has 5 years of experience in a bar/lounge setting. Council member Waldrep asked how long the applicant has known the manager, to which Mr. Roberts answered 10 years.

Council member Waldrep inquired about the sale of food in the establishment and if so, what percentage of sales would the food represent. Mr. Roberts said that the food would represent about 40% of sales from the business. Mr. Roberts continued by stating that Mr. Eun has made a considerable investment in this business. The color of the building has been changed and windows would be added to address the concerns of the community.

Council member Waldrep asked if the applicant had any knowledge of the license the previous owner had and if so, what measures would be taken to prevent the same outcome. Mr. Roberts stated that the applicant knows that the previous owner surrendered their license. In his opinion, they were not experience or aware of the responsibilities of having a beer license. Mr. Eun, on the other hand, has hired a seasoned manager who is knowledgeable of policing under age drinkers, as well as security agency who would be on the premises full time.

Council member King questioned the fact that there were two 50% owners of the club but only one affidavit signed regarding their relationship to the previous owners. Mr. Roberts said that if another affidavit needed to be submitted, then his clients would have no problem complying. Council member King also asked if the applicants had any business transactions with the previous owners? Mr. Roberts answered no.

Speakers in Opposition:

Diane Bradford, who resides from 1177 Powder Springs Road, spoke as a representative of the Dunleith Homeowners Association. She stated that they are less inclined to trust any applicants wanting to open the Maria Bonita Club because of the actions of previous owners. The bar/lounge would attract the same cliental and illegal activities as before. Ms. Bradford believes that the former and current owners have some connection since the current manager was present at the former owners license revocation hearing. The Dunleith community has nothing personal against Mr. and Mrs. Eun; however, the Eun's prosperity should not be at the expense of the neighborhood.

Ms. Bradford inquired of Mr. Roberts why the club was not turned into a restaurant. Mr. Roberts stated that a bar/lounge is what the applicants choose to open at this time.

Ms. Bradford questioned why the applicants have not made an effort to contact the neighborhoods to try and resolve some of the issues that have been raised. Mr. Roberts mentioned that the beer license has been issued and it is the community that is appealing this issue.

Ms. Bradford asked why the applicants felt security was needed for the club. Mr. Roberts explained that most establishments that sell beer need security to ensure that underage patrons are not admitted.

Council member Sinclair wanted to clarify whether the current manager or Mr. Eun were present at the revocation hearing for the previous owner. Mr. Roberts stated that neither was at the revocation hearing.

Culley Carson, who resides at 1048 Laurel Valley Drive, spoke representing the Laurel Springs Homeowners Association. Mr. Carson expressed concern for not being given the opportunity to cross-examine all relevant parties listed on the application, most of who were not present at this time.

Mr. Carson requested additional time after being advised by City Attorney Douglas Haynie that time had expired for speakers in opposition of this matter.

A motion was made by Council member Waldrep, seconded by Council member Goldstein, to extend the time five (5) minutes for those speaking in opposition. The motion carried by the following vote:

Vote: 7 - 0 - 0

Approved

Mr. Carson continued by expressing concern regarding the legality of the affidavit signed by Mr. Eun where the word restaurant was circled and replaced by bar/lounge. Mr. Carson also questioned why so much information was redacted or darkened out on the copy of the application he received. Lastly, Mr. Carson stated that a bar/lounge would contribute to the further decline of this neighborhood.

In regard to the reason the former owner surrendered their license, Mayor Dunaway assured the appellants that the city manager and staff are diligent about enforcing city ordinances. Not only in high profile cases but also throughout the city.

Business License Manager Scott Everingham explained the reason for redacting information under the Georgia Open Records Act. Certain personal identification information such as phone numbers, home addresses and financial information was not public and therefore redacted for the protection of the business owner. Second, the affidavit on page 35 was prepared for restaurants to let the applicant know that they must meet the requirements to sell alcohol on Sunday. By replacing the word restaurant with bar/lounge the applicant understood that he did not meet the requirements to sell alcohol on Sunday.

Council member Waldrep questioned whether the notary seal was present on the original affidavit on page 35, which Mr. Everingham confirmed. Council member Waldrep asked the city attorney whether the omission of the expiration of the notary would render the notarization void, to which Mr. Haynie answered no. Council member Waldrep inquired whether the signed affidavit was sufficient for both applicants since only Mr. Eun signed it. Mr. Haynie stated that one affiant could not sign for another; therefore, the affidavit would only be valid for Mr. Eun.

Council member King referred to the lack of an expiration date on the affidavit and asked staff to revise the form to include that information to ensure that future applications are complete. Mr. Everingham presented the original document and mentioned that the expiration date was indeed present on the notary seal.

At the request of Council member Goldstein, the city attorney stated that the burden of proof is on the appellant, those who oppose the fact that the beer license has been approved by the city manager. Council member Goldstein then sought a recommendation from City Attorney Haynie based on case law, statutes and evidence presented whether council should uphold the decision made by the city manager. Mr. Haynie stated that he would recommend approval according to the case law issued by the Supreme Court.

Council member Goldstein made a motion to sustain the decision of the city manager based on the case law, evidence and the fact that the burden of proof has not been carried.

Council member Waldrep expressed concern with the application, which in his opinion was fraught with errors and omissions, specifically in regards to the affidavit from Mrs. Eun. He also felt it suspect that the proposed manager found it unnecessary to appear to answer questions. For those reasons Council member Waldrep stated he was unable to support the motion.

Mayor Dunaway suggested that the motion be revised to address the issue regarding a signed affidavit from Mrs. Eun. Council member Goldstein asked the applicants attorney if they would agree to that condition as a part of the motion, to which Mr. Roberts answered yes.

Motion to sustain the decision of the city manager subject to the receipt of the required affidavit from Joong Sook Eun, who is a 50% owner of the Maria Bonita Club within the next 10 days. The license shall not be issued until the affidavit has been provided.

The motion was made by Council member Goldstein, seconded by Council member King, to Uphold the City Manager Decision. The motion carried by the following vote:

Vote: 4 – 3 – 0

Upheld City Manager Decision

Vote Against: 3 – M. C. “Pete” Waldrep, Jr., John V. Sinclair, and G. A. “Andy” Morris

20041479

HO2005-01 Gerald Alvarez and Ann Clark 144 Coryell Street

HO2005-01 GERALD ALVAREZ AND ANN CLARK request home occupation for property located in Land Lot 12330 of the 16th District, Parcel 0140, 2nd Section of Cobb County, Marietta, Georgia and being known as 144 Coryell Street. Request to establish a home occupation for counseling service.

Mayor Dunaway called forward those wishing to speak regarding this matter and limited the time to ten (10) minutes per side.

Mr. Gerald Alvarez and wife Dr. Ann Clark, applicants, requested a special land use permit for type B home occupation for property located at 144 Coryell Street. Dr. Clark would use part of the space to operate a private practice in individual, marriage and family counseling. The home itself would not be altered to resemble an office, however, there would be a small sign placed in front for clarity.

This request was previously brought forward in the form of a rezoning request, which was denied by council on October 13, 2004. One of the concerns raised at that time was regarding increased traffic flow. Dr. Clark mentioned that patient appointments would be scheduled hourly, which would not increase traffic flow on Coryell Street. There would be an average of three (3) appointments a day since this is not a fulltime practice. Another issue raised was regarding landscape, to which Dr. Clark commented that no trees would be removed and the yard would continue to be maintained. Also, cars would not be seen from the street with the ample parking space behind the home.

Speakers in Opposition:

Barbara Spryn, who resides at 362 Waterman, expressed concern with other office type business moving into the area along with the additional traffic the home occupation would bring.

Shirla Ann Sparks, who resides at 140 Coryell Street, spoke in opposition to the home occupation stating that she wanted the area to remain a residential community.

Robbie Huck, who resides at 191 Summit Avenue, expressed concern with the granting of home occupation permit leading to other businesses migrating to the area.

Council member Hunter pointed out that the granting of a home occupation permit would only be for Dr. Clark while she occupies that home. There would be no other doctors joining her, and the location of the home is ideal for this type of home occupation.

Motion to grant the request for a home occupation permit.

The motion was made by Council member Hunter, seconded by Council member Goldstein, that this matter be Approved. The motion carried by the following vote:

Vote: 5 - 1 - 0

Approved

Vote Against: 1 - G. A. "Andy" Morris

20041082

October Regular Council Meeting Date Change Request

Motion to approve changing the October 12, 2005, regular City Council meeting date to Tuesday, October 11, 2005, due to the conflict with Erev Yom Kippur.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20041451 Travel Expenses for GMA Board Meeting**

Motion to approve the travel expenses for Councilman Philip M. Goldstein for the GMA Board of Directors meeting at Callaway Gardens.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1 **Approved**

Abstain: 1 - Philip M. Goldstein

* **20041456** **Proposed Right of Way Purchase on Fairlane Drive**

Motion to authorize advertisement for a public hearing at the February 2005 City Council meeting in regards to a request to purchase right of way along Fairlane Drive.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 **Approved**

* **20041458** **Final approval of the Quitclaim deed for the former Campbell Hill Street**

Motion to approve request for final approval of the quitclaim deed for the former right-of-way for Campbell Hill Street.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 **Approved**

*** 20041482 Mayor's Day Conference Travel Expenses**

Motion to approve travel & training expenses for Council members Betty Hunter and Philip M. Goldstein for the Mayors' Day Conference, January 22-24, 2005, at the Omni Hotel in Atlanta.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 0 - 2 **Approved**

Abstain: 2 - Betty Lou Hunter and Philip M. Goldstein

*** 20050014 Proposed "No Parking" Zone at 329 Atlanta Street**

Motion to approve the request for a "No Parking" zone at 329 Atlanta Street.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 **Approved**

*** 20050036 Extension of Remington Contract**

Motion to extend the management contract for the Marietta Conference Center & Resort with Remington Hospitality until March 31, 2005.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 **Approved**

